

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling of The Alliance for	)	MB Docket No. 09-13
Community Media, <i>et al.</i> , that AT&T's Method of	)	File No. CSR-8126
Delivering Public, Educational and Government	)	
Access Channels Over Its U-Verse System is	)	
Contrary to the Communications Act of 1934, as	)	
Amended, and Applicable Commission Rules	)	
	)	
Petition for Declaratory Ruling of the City of	)	File No. CSR-8127
Lansing, Michigan on Requirements for a Basic	)	
Service Tier and for PEG Channel Capacity Under	)	
Sections 543(b)(7), 531(a), and the Commission's	)	
Ancillary Jurisdiction Under Title I	)	
	)	
Petition for Declaratory Ruling Regarding Primary	)	File No. CSR-8128
Jurisdiction Referral in <i>City of Dearborn et al. v.</i>	)	
<i>Comcast of Michigan III, Inc. et al</i>	)	
	)	
	)	

**ORDER**

**Adopted: April 1, 2009**

**Released: April 1, 2009**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. On February 6, 2009, the Bureau issued a Public Notice seeking comment on petitions for declaratory ruling regarding public, educational, and governmental programming.<sup>1</sup> Pursuant to Rule 0.459,<sup>2</sup> AT&T requested that certain information contained within its Comments to the above-captioned proceeding be withheld from public inspection because it constituted confidential material that is commercially sensitive regarding AT&T's U-verse system.<sup>3</sup> AT&T states that this information is not otherwise publicly available, and that public disclosure of this information could result in substantial competitive harm to AT&T.<sup>4</sup>

2. AT&T has agreed to allow all parties to this proceeding to view the withheld information subject to a Protective Order. On March 31st, AT&T, petitioner ACM *et al.* and petitioner City of

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<sup>1</sup> *Entities File Petitions for Declaratory Ruling Regarding Public, Educational, and Governmental Programming*, DA 09-203 (MB rel. February 6, 2009) ("Public Notice").

<sup>2</sup> 47 C.F.R. § 0.459.

<sup>3</sup> See Letters from Geoffrey M. Klineberg, counsel for AT&T, to Marlene H. Dortch, Secretary of the Federal Communications Commission, dated March 9, 2009 and March 31, 2009.

<sup>4</sup> *Id.* at 2.

Lansing, Michigan<sup>5</sup> filed a Joint Motion for Entry of Protective Order. The parties claim that this Protective Order would allow the review of the information AT&T submitted, while protecting that information from unwarranted and potentially harmful disclosure. This Protective Order would enable the petitioners and other parties to this proceeding to review the information that AT&T submitted as confidential and proprietary information. For the reasons set forth below, we adopt the Protective Order, attached as an Appendix to this Order.

## II. DISCUSSION

3. After due consideration, we are persuaded that the public interest would be served by adopting the Protective Order. The Protective Order should facilitate the orderly exchange of relevant information in this proceeding. Only by providing parties with the ability to fully respond to AT&T's comments in their entirety will we develop the complete record necessary to fully analyze the merits of the petitions. Furthermore, the Protective Order has been negotiated and agreed to between AT&T and petitioners ACM *et al.* and the City of Lansing. Accordingly, we will adopt the Protective Order as negotiated and proposed by the parties.

4. The Protective Order we adopt does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA).

5. Any party seeking access to confidential information subject to the Protective Order shall request access pursuant to the terms of the Protective Order and each person that accesses this confidential information must sign the Declaration attached in the Appendix, and follow the procedures set forth therein.

## III. ORDERING CLAUSES

6. Accordingly, we **ADOPT AND ISSUE** the attached Protective Order pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i) and (j), Section 0.457(d) of the Commission's Rules, 47 C.F.R. §§ 0.457(d), and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and such Protective Order is effective upon its adoption.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.<sup>6</sup>

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau

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<sup>5</sup> Collectively, "the parties."

<sup>6</sup> 47 C.F.R. § 0.283.

## APPENDIX

## PROTECTIVE ORDER

1. This Protective Order is intended to facilitate and expedite the review by Reviewing Parties in this above-captioned proceeding of documents that contain material designated by AT&T as trade secrets and privileged or confidential commercial or financial information. It establishes the manner in which Reviewing Parties are to treat “Confidential Information,” as that term is defined herein. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

2. Definitions.

a. Authorized Representative. “Authorized Representative” shall have the meaning set forth in Paragraph 8.

b. Commission. “Commission” means the Federal Communications Commission or any Bureau or Office within the Commission acting pursuant to delegated authority.

c. Confidential Information. “Confidential Information” means (i) information submitted to the Commission by AT&T that has been so designated by AT&T and which AT&T has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and (ii) information submitted to the Commission by AT&T that has been so designated by AT&T and which AT&T has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of, notes, and information derived from Confidential Information.

d. Declaration. “Declaration” means the declaration attached to this Protective Order.

e. Reviewing Party. “Reviewing Party” means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

3. Claim of Confidentiality. AT&T may designate information as “Confidential Information” consistent with the definition of that term in Paragraph 2.c of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 and 0.461, determine that all or part of the information claimed as “Confidential Information” is not entitled to such treatment.

4. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, “CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE.” Confidential Information shall be segregated by AT&T from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and nonconfidential information, AT&T shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

5. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the

Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

6. Access to Confidential Information. Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel for the Reviewing Parties. Before counsel to a Reviewing Party may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement the scope of which includes the Confidential Information, or if they execute the attached Declaration.

7. Disclosure. Counsel to a Reviewing Party may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of Paragraph 8 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

8. Authorized Representatives shall be limited to:

a. Subject to Paragraph 8.d, counsel for the Reviewing Parties to this proceeding, including in-house counsel, actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Subject to Paragraph 8.d, specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; and

c. Subject to Paragraph 8.d., any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper; except that,

d. Disclosure shall be prohibited to any persons in a position to use the Confidential Information for competitive commercial or business purposes, including persons involved in competitive decision-making, which includes, but is not limited to, persons whose activities, association or relationship with the Reviewing Parties or other Authorized Representatives involve rendering advice or participating in any or all of the Reviewing Parties', Authorized Representatives' or any other person's business decisions that are or will be made in light of similar or corresponding information about a competitor.

9. Inspection of Confidential Information. Confidential Information shall be maintained by AT&T for inspection in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice not to exceed one business day during normal business hours.

10. Copies of Confidential Information. AT&T shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this

proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to AT&T upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly and fully secured from access by unauthorized persons at all times.

11. Filing of Declaration. Counsel for Reviewing Parties shall provide to AT&T and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed by such Authorized Representative, or by any other deadline that may be prescribed by the Commission.

12. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or that is obtained independently in proceedings before a court or agency of competent jurisdiction; or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents. The foregoing shall not be construed to preclude any person, counsel or consultant from commencing, prosecuting or defending any action in a court of competent jurisdiction, provided that Confidential Information is not directly used or disclosed by such person, counsel or consultant in any such action except to the extent permitted by this paragraph. The term "directly use" means the explicit introduction of the Confidential Information in the course of a proceeding (unless the information is obtained independently in that proceeding).

13. Pleadings Using Confidential Information. Both AT&T and the Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential Information included pursuant to Protective Order, MB Docket No. 09-13, File No. CSR-8126, et al;" and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, AT&T, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to AT&T and an opportunity to comment on such proposed disclosure). AT&T and the Reviewing Parties filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. AT&T and the Reviewing Parties may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notations required by this Paragraph 13 are not removed.

14. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to AT&T. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to cease and remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and AT&T, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to AT&T at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

15. Termination of Proceeding. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall, at the direction of AT&T, destroy or return to AT&T all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and AT&T that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of any pleadings containing Confidential Information submitted on behalf of the Reviewing Party. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with Paragraphs 10 and 12 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

16. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by AT&T of any privilege or entitlement to confidential treatment of such Confidential Information, nor shall Reviewing Parties' acceptance of this Order or execution of the Declaration be deemed a waiver of any claim that material designated by AT&T as Confidential Information is not entitled to such treatment under applicable law. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

17. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of AT&T to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

18. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Parties, executing the attached Declaration, and AT&T.

19. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. § 0.457(d).

**DECLARATION**

I, \_\_\_\_\_, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by AT&T in this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of this proceeding. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with AT&T. I am not in a position to use the Confidential Information for competitive commercial or business purposes, including competitive decision-making, and my activities, association or relationship with the Reviewing Parties, Authorized Representatives, or other persons does not involve rendering advice or participating in any or all of the Reviewing Parties', Authorized Representatives' or other persons' business decisions that are or will be made in light of similar or corresponding information about a competitor.

(signed) \_\_\_\_\_  
(printed name) \_\_\_\_\_  
(representing) \_\_\_\_\_  
(title) \_\_\_\_\_  
(employer) \_\_\_\_\_  
(address) \_\_\_\_\_  
(phone) \_\_\_\_\_  
(date) \_\_\_\_\_